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UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

In re:

J & D WILSON AND SONS DAIRY,
Debtor-in-Possession.

Case No. 14-10588-B-11

Chapter 11

DC No. KDG-1

Emergency Hearing Date: February 12, 2014

Emergency Hearing Time: 11:30 a.m.

Final Hearing Date: To be set

Final Hearing Time: To be set

Place: United States Bankruptcy Court

2500 Tulare Street, Fifth Floor

Department B, Courtroom 12

Fresno, California

Judge: Honorable W. Richard Lee

**MOTION TO USE CASH COLLATERAL
AND GRANT ADEQUATE PROTECTION**

MOTION

J & D WILSON AND SONS DAIRY, a California general partnership, Debtor and Debtor-in-Possession in the above-referenced case ("Debtor"), respectfully moves the court for an order authorizing it to use "cash collateral" in the form of cash on hand, money on deposit, milk and cull proceeds, and feed ("the Cash Collateral"), and to grant adequate protection to secured creditors asserting an interest in the Cash Collateral. In support of this motion (the "Motion"), Debtor represents the following:

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JURISDICTION AND VENUE

Debtor commenced this Chapter 11 case by filing its Voluntary Petition under Chapter 11 of the Code on February 7, 2014. There is no Chapter 11 trustee and Debtor is also a Debtor-in-Possession.

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. This is a “core” proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (M). These matters have been referred to the Court by United States District Court for the Eastern District of California according to General Orders 182 and 223.

2. Venue is properly in this Court pursuant to 28 U.S.C. § 1409(a).

LEGAL BASIS FOR MOTION

3. In accordance with 11 U.S.C. § 363(b) & (c), Rules 9014, 4001(b), 2002(a)(2) of the Federal Rules of Bankruptcy Procedure (“FRBP”) and Local Rule 4001-1(c) & 9014-1(f)(4), Debtor seeks an order of the Court authorizing the use of the Cash Collateral, and to grant adequate protection to secured creditors asserting an interest in the cash collateral.

FACTUAL BASIS FOR MOTION

4. Debtor was formed on January 1, 2001. The partners of Debtor are James L. Wilson (25%) and Darla Wilson (25%) and Cornelius Vanderham and Eleanor Vanderham as trustees of the Vanderham Family Trust, dated March 17, 1994 (50%). James L. Wilson manages the day-to-day operation of the dairy.

5. Debtor is engaged in a dairy business in Fresno County, California. Debtor’s primary assets are real estate, dairy and farming equipment, and livestock. Debtor owns about 3,385 animals including milk cows, dry cows, heifers, calves, and bulls. Debtor currently employs about 29 people, including 4 insiders.

6. Debtor’s mortgage is held by Farm Credit West, FLCA (“Farm Credit”). Before filing for relief under Chapter 11, Debtor’s dairy operations were financed primarily by Wells Fargo Bank, N.A., a national banking association (“Wells Fargo”). Debts to Wells Fargo are secured by a security interest in Debtor’s personal property. A copy of the UCC-1 Financing Statement filed with the California Secretary of State by Wells Fargo is included in

1 the *Exhibits to Motion to Use Cash Collateral and Grant Adequate Protection* (“Exhibits”) as
2 Exhibit “B.”

3 7. The dairy industry has faced significant economic challenges in the last several
4 years. Volatility in feed costs and milk prices has decreased profitability for milk producers
5 over several years. Debtor’s reduced net income has caused Debtor to fall behind in payments
6 to its creditors. Furthermore, Debtor and Wells Fargo have entered several short-term
7 forbearance agreements over the last year that have required the repayment of a large amount
8 of the principal debt to the detriment of the overall financial health of Debtor’s operations.
9 Debtor now needs to take a holistic review of its business and financial position. Therefore,
10 Debtor filed this Chapter 11 case in order to continue the operation of its dairy and reorganize
11 its business and financial affairs.

12 8. Debtor’s “Cash Collateral” consists of the following:

- 13 a. money on deposit;
- 14 b. cash on hand;
- 15 c. milk proceeds;
- d. cull proceeds; and
- e. feed.

16 Based on the loan and security documents, Debtor believes that Wells Fargo has a blanket lien
17 against the Cash Collateral and other personal property owned by Debtor. Based on
18 Prepetition Security Documents, loan statements, and the representations of Wells Fargo,
19 Debtor believes that the debt owed to Wells Fargo is \$6,375,692.16.

20 9. Debtor is negotiating a stipulation with Wells Fargo for use of Cash Collateral
21 and to grant adequate protection (“the Stipulation”). Under the Stipulation, Wells Fargo would
22 agree to allow Debtor the use of cash collateral and Debtor would agree to (a) provide Wells
23 Fargo the adequate protection indicated in the Stipulation, and (b) report its use of cash
24 collateral to Wells Fargo. A copy of the Stipulation, if finalized before the hearing, will be
25 filed in support of this Motion.

26 10. Based upon Debtor’s records and a search of the records on file with the
27 California Secretary of State’s office, B & L Farms filed a UCC-1 financing statement against
28 Debtor on May 1, 2009, asserting Dairy Cattle Supply Lien under Food and Agricultural Code

1 section 57402. The lien has been paid; however, a release has not been recorded. Therefore,
2 Debtor disputes the validity of the Dairy Supply Lien filed by B & L Farms.

3 **AMOUNT OF CASH COLLATERAL USE SOUGHT BY DEBTOR**

4 11. Debtor expects to move quickly in proposing a plan of reorganization, but
5 Debtor cannot determine with certainty the timetable for filing a plan of reorganization. In the
6 interim, Debtor seeks the Court's authorization to use Cash Collateral from the petition date
7 through the date of confirmation of the Debtor's Plan of Reorganization. However, to avoid
8 immediate and irreparable harm, pending a final hearing on the Motion, Debtor requests
9 interim authorization to use cash collateral on a semi-monthly basis as set forth in the budget
10 attached as Exhibit "A" to the Exhibits (the "Budget"). In the alternative, Debtor seeks the
11 Court's approval of the Stipulation (if filed) and authorization to use cash collateral as
12 provided therein. Debtor requests interim authorization to use cash collateral on a semi-
13 monthly basis as set forth in the Budget within a 10% variance. Debtor requests interim
14 authorization to use between \$636,390.00 and \$704,167.00 per two-week period from
15 February 7, 2014, through a final hearing on the Motion as described in the Budget. Debtor
16 will continue to seek the consensual use of Cash Collateral after that initial period, and budgets
17 will be proposed by Debtor through the date of confirmation of the Debtor's Plan of
18 Reorganization.

19 12. The immediate and irreparable harm that will befall debtor if it does not obtain
20 the use of Cash Collateral is that (a) Debtor will be unable to feed and care for the 3,385
21 animals under its care, (b) Debtor will be unable to pay its employees, (c) Debtor will be
22 unable to pay its utility bills, all of which would cause immediate crises to Debtor's employees
23 and animals, and effectively shut Debtor down. Unmilked dairy cows quickly cease to produce
24 milk, and skilled employees are hard to replace. Each item on the Budget was carefully
25 considered and deemed by Debtor's principals to be necessary to Debtor's continued operation.

26 **ADEQUATE PROTECTION OFFERED BY DEBTOR**

27 13. Debtor will provide Wells Fargo with adequate protection (as may be further
28 described in the Stipulation), including:

- a. caring for and maintaining the secured parties' collateral,
- b. granting Wells Fargo a replacement lien on Debtor's post-petition property of the same type and nature as against Debtor's prepetition property to the extent the use of cash collateral results in a decrease in value of Wells Fargo's interest in its collateral,
- c. making monthly interest-only adequate-protection payments to Wells Fargo at the non-default contractual interest rate in the amount of about \$27,894.00; and
- e. providing monthly financial reports to Wells Fargo, and allowing reasonable inspection of its operations;


PRAYER FOR RELIEF

WHEREFORE, Debtor prays for an order:

1. Granting the Motion on an interim basis pending a final hearing;
2. Approving the Budget and authorizing Debtor to use Cash Collateral as provided therein with a 10% variance on an interim basis pending a final hearing;
3. Authorizing Debtor to use Cash Collateral with a 10% variance after a final hearing through confirmation of a plan of reorganization or further order of the court limiting use of Cash Collateral;
4. Approving the Stipulation (if filed);
5. Granting adequate protection to secured creditors as described above (and/or the Stipulation); and
6. For such other and further relief as is just and proper.

Date: February 10, 2014

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By 
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